



Congress of the United States
House of Representatives
Washington, DC 20515-0529

147

February 18, 2015

The Honorable Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th St SW
Washington, DC 20554

Dear Attorney General Holder and Chairman Wheeler:

Independent program providers are an essential part of the diversity of programming options available to pay-TV subscribers in America. In July 2014, more than fifty of my colleagues joined me in a letter to Chairman Wheeler, asking him to ensure that, in a potential merger between Comcast and Time Warner Cable, independent program providers are able to operate on an even playing field in an increasingly consolidated media environment. We're writing today to again ask that close attention be paid to the pending merger between Comcast and Time Warner Cable to ensure that their potential increased market dominance does not negatively impact communities and protects the best interest of consumers and viewers.

Comcast and Time-Warner have maintained that such a market domination would not be likely under the proposed merger. However, this week brought more evidence this may not be the case. Estrella TV is currently under a carriage agreement with Comcast in Denver, Houston and Salt Lake City which expires at midnight on February 19th. If the parties are unable to come to terms by that date, Estrella TV contends that it will be forced to terminate its agreement with Comcast subscribers in those markets because the terms Comcast has been requiring are commercially unfeasible.

This classic example of a contract negotiation with a direct competitor to Comcast's Telemundo, shows the potential for an uneven playing field, under that direct competitor, when sitting at the bargaining table and negotiating for commercially reasonable terms. As a gatekeeper to the information services provided to 90% of Hispanic pay-TV subscribers and more than 30% of all pay-TV households in America, a merged Comcast will have an incentive to discriminate against independent program providers and drive down carriage fees for competitors, position those competitors poorly on the dial, offer them in standard definition versus high definition, or place them on more expensive programming tiers. Each of these outcomes would economically disadvantage any independent program provider when competing with a Comcast-owned competitor.

Congress has a long history of supporting competition going as far back as the passage of the Sherman Antitrust Act in 1890. With that in mind, we ask that your review of the proposed merger consider whether the increased leverage created by virtue of the new company's size and market dominance would result in, and even encourage, anti-competitive practices.

This letter should not be construed as taking sides in the current contractual dispute. However, the overarching concerns we have are historically the purview of Congress. While it is clearly not the place of Congress to meddle in individual contract negotiations occurring fairly, on an even playing field, between two companies, this situation clearly demonstrates the difficulties independent program providers face when negotiating with Comcast and other heavily vertically integrated companies.

As we have too often seen, programmers lack reasonable carriage alternatives in most markets. Comcast mimics other large cable companies in their domination of a given market. For instance, Comcast itself has pointed out that they do not compete with Time-Warner in most markets, nor with other major cable companies. This denies a free market for content providers to seek a better deal elsewhere. Direct Broadcast Satellite TV is not an equivalent alternative since many independent content providers are carried regionally and cater to a regional audience, which is not possible on the nationwide satellite programming. Likewise, providing programming solely online, in the absence of access to Comcast, is not a viable alternative, given the lower rates of broadband access when compared with cable.

Comcast, in the person of Executive Vice President David Cohen, said to a Senate committee hearing, "Comcast, like the MVPDs with which it competes, has every business incentive to carry programming that its customers value and demand." That attitude would indicate a proper, market-focused decision-making process, not one based on suppressing competition. However, in the current contract negotiations, Estrella TV showed strong Nielsen ratings during November sweeps, higher than Comcast's Telemundo in primetime among Hispanics 25 to 54 in Salt Lake City, Denver and Los Angeles.

Independent program providers, like all businesses in America, must have the protection against vertical integration pressures provided by American law. No company should be forced to compete against a vertically integrated company given unfair advantage by powerful corporate parents.

As Members of Congress, we believe it is in the best interest of the public and the consumer to promote competition on the airwaves and recognize the disadvantage of scale that independent programmers face when negotiating for distribution and carriage fees. We ask that in the course of your review of the proposed merger between Comcast and Time Warner Cable, your agencies closely examine whether safeguards could even exist to protect unaffiliated programming from being discriminated against on the basis of self-interest.

We look forward to working with you on this issue and thank you for your consideration of our views. Please do not hesitate to contact us directly if you need any additional information.

Sincerely,

Tony Cardenas

Janie Hahn

Raul H. Grijalva

Sam Lane

Zoe Loya



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 26, 2015

The Honorable Tony Cárdenas
U.S. House of Representatives
1508 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Cárdenas:

Thank you for your letter regarding the proposed acquisition of Time Warner Cable (TWC) by Comcast. I appreciate your interest in the Commission's review of the transaction, as well as hearing your views on the matter. Your letter will be made part of the record.

As noted in your letter, you seek an examination of the impact of the merger on independent programmers and ask that we closely examine whether safeguards exist to protect unaffiliated programming from discrimination. I can assure you that these issues are front and center in the Commission's proceeding.

As I have expressed to you before, we will continue to conduct an open and transparent process as we review the issues presented by the proposed transaction, including the concerns raised in your letter.

I hope this information is helpful.

Sincerely,

A handwritten signature in blue ink, which appears to read "Tom Wheeler", is written over the printed name.

Tom Wheeler